

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington, DC 20350-1000

SECNAVINST 7431.1
NMPC-64EE
18 July 1988

SECNAV INSTRUCTION 7431.1

From: Secretary of the Navy
To: All Ships and Stations

Subj: INVOLUNTARY ALLOTMENTS FOR
CHILD AND SPOUSAL SUPPORT

Ref: (a) DODDIR 1340.17 of 3 Jun 86
(NOTAL)
(b) Title 42 U.S. Code, Section 665
(NOTAL)

Encl: (1) Definitions
(2) Procedures for Processing Child
and Spousal Support Allotments

1. Purpose. To establish Department of the Navy policies and procedures for effecting involuntary allotments for child or child and spousal support from the pay and allowances of an active duty member where the member has failed to provide support payments as ordered by a court, in accordance with references (a) and (b).

2. Definitions. The terms used in this instruction are defined in enclosure (1).

3. Policy. Department of the Navy policy, under reference (b) is to require child, or child and spousal, support allotments from the pay and allowances of members who fail to make periodic payments under a support order in an amount equal to the support payable for two or more months.

a. Involuntary allotments for delinquent support payments will be initiated only upon receipt of a signed notice from an authorized person to the officials designated in this instruction following the procedures in enclosure (2).

b. The member will be afforded an opportunity to consult with a judge advocate or legal officer unless it is impractical for military operational reasons to do so.

c. The member must be provided with a copy of the notice and all documents submitted with the notice.

d. The member will be given 30 days in which to furnish the designated official with affidavits or other documentation to show the notice is in error.

4. Procedures. Procedures for processing statutory child and spousal support allotments are in enclosure (2).

5. Department of the Navy Designated Officials. The following officials are designated offices for the purpose of this instruction:

Navy:

Director
Navy Family Allowance Activity
Anthony J. Celebrezze Federal Building
Cleveland, OH 44199-2087
Telephone: (216) 522-5301,
AUTOVON: 580-5301

Marine Corps:

Commanding Officer
Marine Corps Finance Center (Code 0C)
Kansas City, MO 64197-1000
telephone: (816) 926-7103,
AUTOVON: 465-7103

6. Responsibility

a. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) is responsible for child and spousal support policy under this instruction.

b. The Chief of Naval Operations and Commandant, Marine Corps are responsible for carrying out the procedural guidelines and protections in this instruction.

P. BERGQUIST
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

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DEFINITIONS

1. Authorized Person. Any agent or attorney of any state having in effect a plan approved under part D of title IV of the Social Security Act, 42 U.S.C. 651-665 who has the duty or authority to seek recovery of any amounts owed as child or child and spousal support (including, when authorized under the state plan, any official or a political subdivision); and the court that has authority to issue an order against a member for the support and maintenance of a child, or any agent of such court.

2. Child Support. Periodic payments for the support and maintenance of a child or children, subject to and in accordance with state or local law. This includes, but is not limited to, payments to provide for health care, education, recreation, and clothing, or to meet other specific needs of such a child or children.

3. Designated Official. The representative of the Military Service concerned who is authorized to receive and to process notices under this instruction. For the Navy, Director, Family Allowance Center and for the Marine Corps, Commanding Officer, marine Corps Finance Center (Code AA).

4. Notice. A court order, letter, or similar documentation issued by an authorized person providing notification that a member has failed to make periodic support payments under a support order.

5. Spousal Support. Periodic payments for the support and maintenance of a spouse or former spouse, in accordance with state or local law. It includes, but is not limited to, separate maintenance, alimony while litigation continues, and maintenance. Spousal support does not include any payment for transfer of property or its value by an individual to his or her spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

6. Support Order. Any order providing for child or child and spousal support issued by a court of competent jurisdiction within any state, territory, or possession of the United States, including Indian tribal courts, or in accordance with administrative procedures established under state law that affords substantial due process and is subject to judicial review.

Enclosure (1)

PROCEDURES FOR PROCESSING CHILD AND SPOUSAL SUPPORT ALLOTMENTS

1. Notice To Designated Official

a. An authorized person shall send to the designated official a signed notice that includes:

(1) A statement that delinquent support payments equal or exceed the amount of support payable for two months under a support order, and a request that an allotment be initiated pursuant to 42 U.S.C. 665.

(2) A certified copy of the support order.

(3) The amount of the monthly support payment. Such amount may include arrearages, if a support order specifies the payment of such arrearages. The notice shall indicate how much of the amount payable shall be applied toward liquidation of the arrearages.

(4) A statement that delinquent support payments are more than 12 weeks in arrears, if appropriate.

(5) Sufficient information identifying the member to enable processing by the designated official. The following information is requested:

(a) Full name,

(b) Social Security Number, and

(c) Military Service (Navy or Marine Corps).

(6) The full name and address of the allottee. The allottee shall be an authorized person, the authorized person's designee, or the recipient named in the support order.

(7) Any limitations on the duration of the support allotment.

(8) A certification that the official sending the notice is an authorized person.

b. The notice shall be sent by mail or delivered in person to the appropriate designated official of the Military Service. The designated official shall note the date and time of receipt on the notice.

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c. The notice is effective when it is received in the office of the designated official.

d. When the notice does not sufficiently identify the member, it shall be returned directly to the authorized person who sent the notice with an explanation of the deficiency. However, before the notice is returned, if there is sufficient time, an attempt shall be made to inform the authorized person who sent the notice that it will not be honored unless adequate information is supplied.

e. Upon receipt of effective notice of delinquent support payments, together with all required supplementary documents and information, the designated official shall identify the member from whom moneys are due. Following the guidelines in paragraph 4, the designated official shall establish an allotment in the amount necessary to comply with the support order, and to liquidate arrearages if provided by a support order, when the maximum amount to be allotted under this provision, together with any other moneys withheld for support from the member, does not exceed:

(1) Fifty percent of the member's disposable earnings for any month in which the member asserts by affidavit or other acceptable evidence that he or she is supporting a spouse, dependent child, or both, other than a party in the support order. When the member submits evidence, copies shall be sent to the authorized person, together with notification that the member's support claim shall be honored. If the support claim is contested by the authorized person, that authorized person may refer this matter to the appropriate court or other authority for resolution.

(2) Sixty percent of the member's disposable earnings for any month in which the member fails to assert by affidavit or other acceptable evidence that he or she is supporting a spouse, dependent child, or both.

(3) Regardless of the limitations above, an additional five percent of the member's disposable earnings shall be withheld when the notice states that the total amount of the member's support payments is 12 or more weeks in arrears.

2. Disposable Earnings

a. In determining disposal earnings for a member assigned within the contiguous United States, include the following payments.

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(1) Basic pay (including Military Service academy cadet and midshipman pay).

(2) Basic allowance for quarters for members with dependents, and for members without dependents in grade E-7 or higher.

(3) Basic allowance for subsistence for commissioned and warrant officers.

(4) Special pay for physicians, dentists, optometrists, and veterinarians.

(5) Submarine pay.

(6) Flying pay (all crew members).

(7) Diving pay.

(8) Proficiency pay or special duty assignment pay.

(9) Career sea pay.

b. To determine disposable earnings for a member assigned outside of the contiguous United States, the following shall supplement the payments listed in paragraph 2a, above:

(1) Foreign duty pay.

(2) Special pay for duty subject to hostile fire (applies only to members permanently assigned in a designated area).

(3) Family separation allowances (only under certain type-II conditions).

(4) Special pay for overseas extensions.

c. Calculations of disposable earnings shall exclude:

(1) Amounts owed by the member to the United States.

(2) Fines and forfeitures ordered by a court-martial or a commanding officer.

(3) Federal and state employment and income taxes withheld to the extent that the amount deducted is consistent with the member's tax liability.

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(5) Deductions for the servicemen's Group Life Insurance coverage.

(6) Advances of pay received by the member before receipt of notice (see paragraph 3a, below) that may be due and payable by the member at some future date. Requests for advances received after notice for a statutorily required support allotment shall be reduced by the amount of the statutorily required support allotment.

3. Notice to Member and Member's Commanding Officer

a. As soon as possible, but not later than 15 calendar days after the date of receipt of notice, the designated official shall send to the member, at his or her duty station, written notice of the following:

(1) That notice has been received from an authorized person, including a copy of the documents submitted.

(2) The maximum limitations provided in 15 U.S.C. 1673 with a request that the member submit supporting affidavits or other documentation necessary for determining the applicable limitation.

(3) That the member may submit supporting affidavits or other documentation as evidence that the information contained in the notice is in error.

(4) That by submitting supporting affidavits or other necessary documentation, the member consents to the disclosure of such information to the party requesting the support allotment.

(5) The amount or percentage that will be deducted if the member fails to submit the documentation necessary to enable the designated official to respond to the notice within the prescribed time limits.

(6) That a consultation with a judge advocate or legal officer will be provided, if possible, and that the member should immediately contact the nearest legal service office.

(7) Of the date that the allotment is scheduled to begin if the member fails to submit the documentation necessary to enable the designated official to respond to the notice within the prescribed time limits.

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b. The designated official shall notify the member's commanding officer, or designee, of the need for consultation between the member and a judge advocate or legal officer. The designated official shall provide the member's commanding officer, or designee, with a copy of the notice and other legal documentation received by the designated official.

c. The member's commanding officer shall provide the member with the following:

(1) When possible, an in-person consultation with a judge advocate or legal officer, to discuss the legal and other factors involved in the member's support obligation and failure to make payment.

(2) Copies of all documents submitted with the notice.

d. The member's commanding officer, or designee, shall confirm in writing to the designated official, within 30 days after the member receives the notice, that the member received a consultation with a judge advocate or legal officer concerning the member's support obligation and the consequences of failure to make payments, or, when appropriate, of the inability to arrange such consultation and the status of continuing efforts to fulfill the consultation requirement.

e. If within 30 days after the member receives the notice the member furnishes the designated official with affidavits or other documentation showing the information in the notice to be in error, the designated official shall consider the member's response. The designated official may return to the authorized person, without action, the notice for a statutorily required support allotment together with the member's affidavit and other documentation, if the member submits substantial proof of error, such as:

(1) The support payments are not delinquent.

(2) The underlying support order in the notice has been amended, superseded, or set aside.

f. In any case in which an allotment is required, the designated official shall supply to the member, prior to the start date of the allotment, reasons why the member's response is insufficient to excuse the member from an allotment.

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4. Payments

a. Except as provided in paragraph 4c of this enclosure, the designated official shall start the support allotment by the first end-of-month payday after the designated official is notified:

(1) Of the member's response and determines that it is insufficient to excuse commencement of the allotment, or

(2) That the member consents to the allotment, or,

(3) That a consultation with a judge advocate (or legal officer) was not possible and the member has no objection to such lack of consultation, or

(4) That the member has received notice and failed to respond within 30 days.

The Navy and Marine Corps will not vary their normal military allotment payment cycle to comply with the notice under this paragraph.

b. If several notices are sent with respect to the same member, payments shall be satisfied on a first-come, first-served basis within the amount limitations in paragraph 1e, above.

c. When the member identified in the notice is found not be entitled to money due from or payable by the Military Service, the designated official shall return the notice to the authorized person and shall advise him or her that no money is due from or payable by the Navy or Marine Corps to the named individual. When it appears that amounts are exhausted temporarily or otherwise unavailable, the authorized person shall be told why and for how long, any money is unavailable, if known. If the member separates from active duty, the authorized person shall be informed that the allotment is discontinued.

d. Payment of statutorily required allotments shall be enforced over voluntary deductions and allotments when the gross amount of pay and allowances is not sufficient to permit all authorized deductions and collections.

e. The authorized person or allottee shall notify the designated official promptly if the operative court order upon which the allotment is based is vacated, modified, or set aside. The designated official shall also be notified of any events

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affecting the allottee's eligibility to receive the allotment, such as the former spouse's remarriage, if a part of the payment is for spousal support, and notice of a change in eligibility for child support payments under circumstances of death, emancipation, adoption, or attainment of majority of a child whose support is provided through the allotment.

f. Neither the Department of Defense, nor any officer or employee, shall be liable for any payment made from moneys due from, or payable by, the Department of Defense to any individual pursuant to notice regular on its face, if such payment is made in accordance with this instruction. If a designated official receives notice based on a support order which, on its face, appears to conform to the laws of the jurisdiction from which it was issued, the designated official shall not be required to ascertain whether the authority that issued the order had obtained personal jurisdiction over the member.

5. Termination of Allotments

a. An allotment established under this instruction shall be adjusted or discontinued upon notice from the authorized person.

b. After an allotment has been started, the respective designated official shall consider new information provided by the member, and may discontinue the allotment and notify the authorized person of the discontinuance if the member's affidavit and other documentation demonstrates substantial proof that the basis for the allotment no longer exists.

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